

# **The Bilateral Investment Treaty between Spain and Mexico: Legal Framework**

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1. Investor and Investment Concepts
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# 1. INVESTOR AND INVESTMENT CONCEPTS

## Investor

- A) Individual: national legislation of each Party (Art. I.5.a)
- B) Legal person: constitution and establishment in the host State (Art. I.5.b)

# 1. INVESTOR AND INVESTMENT CONCEPTS

## Investment

Broad definition:

- A) Direct investment + Portfolio investment (Art. I.4)
- B) Movable and immovable property, mortgages, shares, intellectual property rights...(Art. I.4)

## 2. TERRITORIAL AND TEMPORAL APPLICATION

Territorial application

Bi-dimensional concept  
(territory and maritime spaces)  
(Art. I.6)

## 2. TERRITORIAL AND TEMPORAL APPLICATION

### Temporal application

- A) **Investments** made *before* and *after* the entry into force of the BIT (Art. XXI)
- B) **Disputes** arisen *after* the entry into force of the BIT (Art. XXI)

## 2. TERRITORIAL AND TEMPORAL APPLICATION

Temporal application

*In case of termination*

Investments made during the term of the BIT  
will be protected 10 additional years  
(Art. XXIII)

### 3. THE DUTIES OF PROMOTION AND PROTECTION

A) Admission

(according to legislation of the Host State) (Art. II.1)

+

B) Promotion and information exchange  
(general clause) (Art. II.2)



### 3. THE DUTIES OF PROMOTION AND PROTECTION

#### Protection

A) Fair and Equitable Treatment  
(limited scope within NAFTA) (Art. IV)

B) National Treatment (Art. III)

C) Most-Favored Nation Treatment (excludes *Maffezini* effect) (Art. III)

### 3. THE DUTIES OF PROMOTION AND PROTECTION

D) Discriminatory  
Expropriation/Nationalization/Measure of  
equivalent effect (Art. V)

E) Compensation for losses (Art. VI)

F) Repatriation of investments (Art. VII)

### 3. THE DUTIES OF PROMOTION AND PROTECTION

#### Exceptions to MF Treatment

- A) Any customs union/free trade area  
(Art. III.3.a)
- B) International taxation agreements (Art.  
III.3.b)

## 4. DISPUTE SETTLEMENT

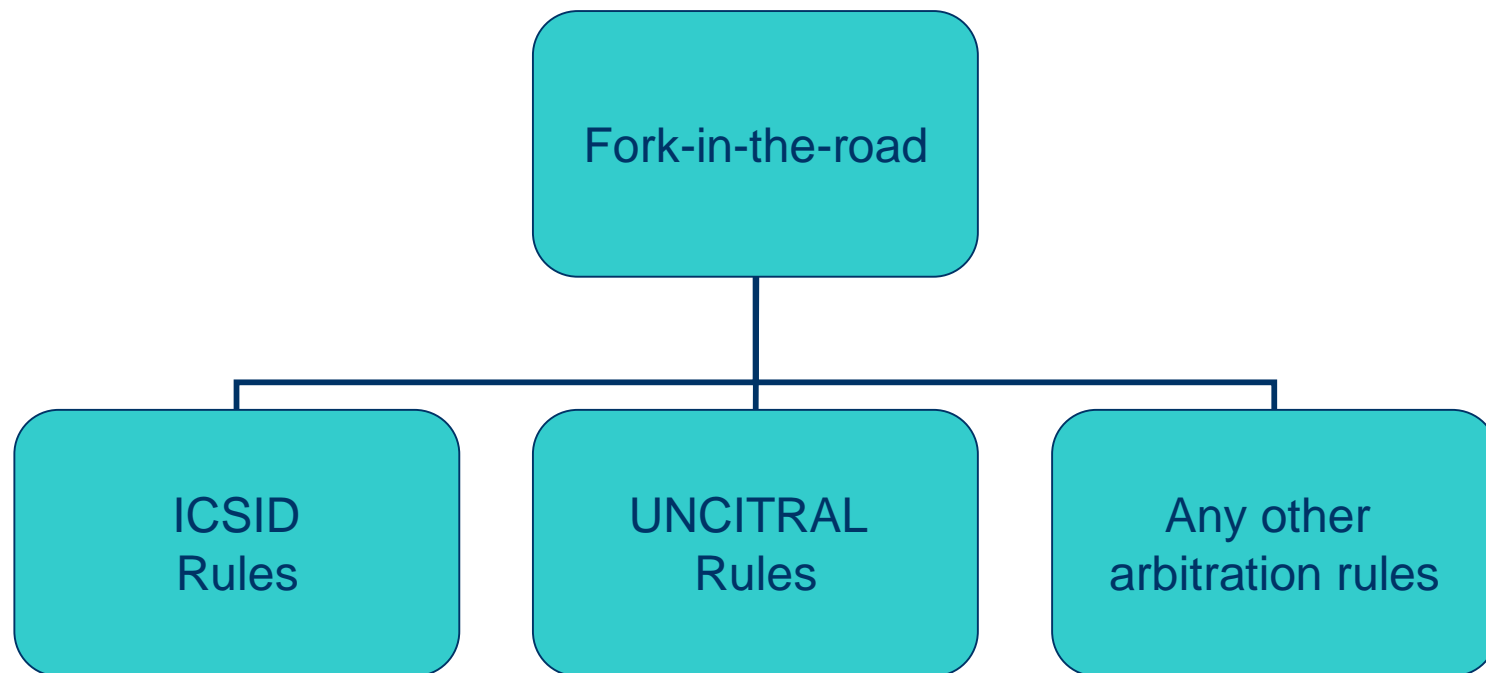
Inter State (Art. 9)

Diplomatic Channels

(within 6 months)  
Arbitral Tribunal

## 4. DISPUTE SETTLEMENT

Investor - State (Art. XI)



## 4. DISPUTE SETTLEMENT

### Investor - State

- A) Consent to arbitration (investor) (Arts. X.5.a and X.6.a)
- B) Consent to arbitration (States) (Art. XII)
- C) International or internal dispute settlement selection (Arts. X.5.b and X.6.b)

## 4. DISPUTE SETTLEMENT

Investor - State  
Accumulation of proceedings (Art. XIV)

ICSID Secretary General

Accumulation Tribunal

## 5. OTHER PROVISIONS

### Subrogation

State of origin (or designated Agency) may guarantee and pay their national investors and then claim or exercise rights against the Host State (Art. VIII).



## 5. OTHER PROVISIONS

*Favor inversionis*

Any most favorable treatment granted to the investor by International or national Law shall prevail over the BIT (Art. XX)